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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.
25 Plaintiff,
26 v.
GOOGLE INC.
27 Defendant.

Case No. CV 10-03561 WHA

**[PROPOSED] ORDER GRANTING
ORACLE'S MOTION IN LIMINE #1
TO EXCLUDE EVIDENCE OF
OPENJDK, INCLUDING EXPERT
TESTIMONY THEREOF**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

[PROPOSED] ORDER GRANTING ORACLE'S
MOTION IN LIMINE #1 TO EXCLUDE EVIDENCE
OF OPENJDK, INCLUDING EXPERT TESTIMONY

1 This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #1
2 To Exclude Evidence Of OpenJDK, Including Expert Testimony Thereof, and any Opposition
3 thereto and Reply in support thereof, and any and all additional supporting papers.

4 Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS
5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6 All evidence, testimony, and opinions (including expert opinions) about OpenJDK that is
7 premised upon the notion that Google could have used OpenJDK for Android in 2007 or any time
8 thereafter is excluded from the trial under Federal Rules of Evidence 402, 403, 702, 703, and
9 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as irrelevant, unreliable,
10 prejudicial, confusing, misleading, and unduly consumptive of trial time. Exemplary examples of
11 excluded evidence, argument, expert opinion, and testimony include: (1) any suggestion that
12 Android could have used or been based on OpenJDK; (2) any mention of a counterfactual
13 scenario involving OpenJDK, such as OpenJDK as a non-infringing alternative to Google's use of
14 the 37 Java API packages; (3) any evidence of Google's recent actions or purported plans to use
15 OpenJDK in Android, such as Google's Christmas Eve 2015 publication of Android source code;
16 and (4) any evidence or argument that because Google could have adopted OpenJDK, Google did
17 not harm the market for the commercial version of the Java SE platform. Excluded and stricken
18 materials also include the expert reports, opinions, and testimony of Mr. Andrew Hall. Mr. Hall's
19 reports, opinions, and testimony are excluded for the same reasons as the above-excluded
20 evidence, testimony, and opinions regarding OpenJDK as well as under Federal Rules of
21 Evidence 402, 403, 702, and 703 as irrelevant and prejudicial, involving matters for which expert
22 opinion is improper, and pertaining to technical matters for which Mr. Hall is not qualified as an
23 expert.

24 IT IS SO ORDERED.

25
26
27 THE HONORABLE WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE